

if
when
how

Lawyering for
Reproductive
Justice

January 31, 2020

CRIMINALIZATION OF PREGNANCY OUTCOMES

PRESENTED BY IF/WHEN/HOW: LAWYERING FOR REPRODUCTIVE JUSTICE
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Presenter



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If/When/How

LET'S GET CENTERED



Road Map

1. Same Page- Delving Into Shared Language
2. National Landscape of Relevant Laws
3. Zoomed into Mississippi
4. Forensically Speaking
5. **Q&A**

Same Page: Delving Into Shared Language



Self Managed Abortion Defined

Self managed abortion is an abortion that someone does on their own. It takes place outside contact with traditional medical systems. It is often supported by friends, family members or partners. It can be with a medication regimen, traditional cultural means, and at times it can be through unsafe means. No one should be criminalized for their abortion, regardless of method.

Medication Abortion defined

A medication abortion can be achieved through Misoprostol alone or through the use of a combination of Mifepristone and Misoprostol. The World Health Organization has recommendation regimens for pregnancies up to 16 weeks.

Mifepristone blocks progesterone needed for pregnancy to continue, and misoprostol causes uterine contractions and the cervix to open up.

ANSIRH, Safety and effectiveness of first trimester medication abortion in the United States, 2016



Impact of COVID-19

Increased risk of unintended pregnancies

- Intimate partner violence
- Access to birth control

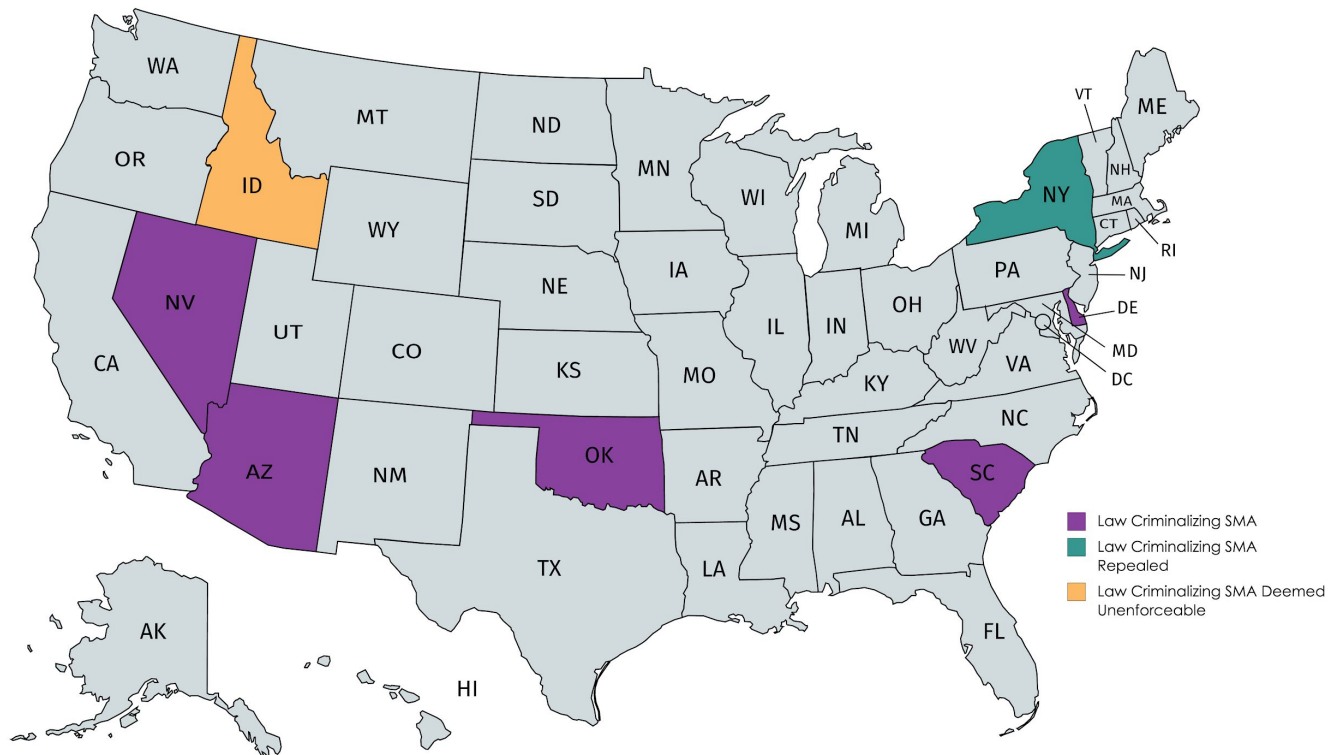
Abortion access more difficult

- Fear of COVID
- Job & insurance loss makes it hard to pay for an abortion
- States try to stop abortion
- Racial disparities

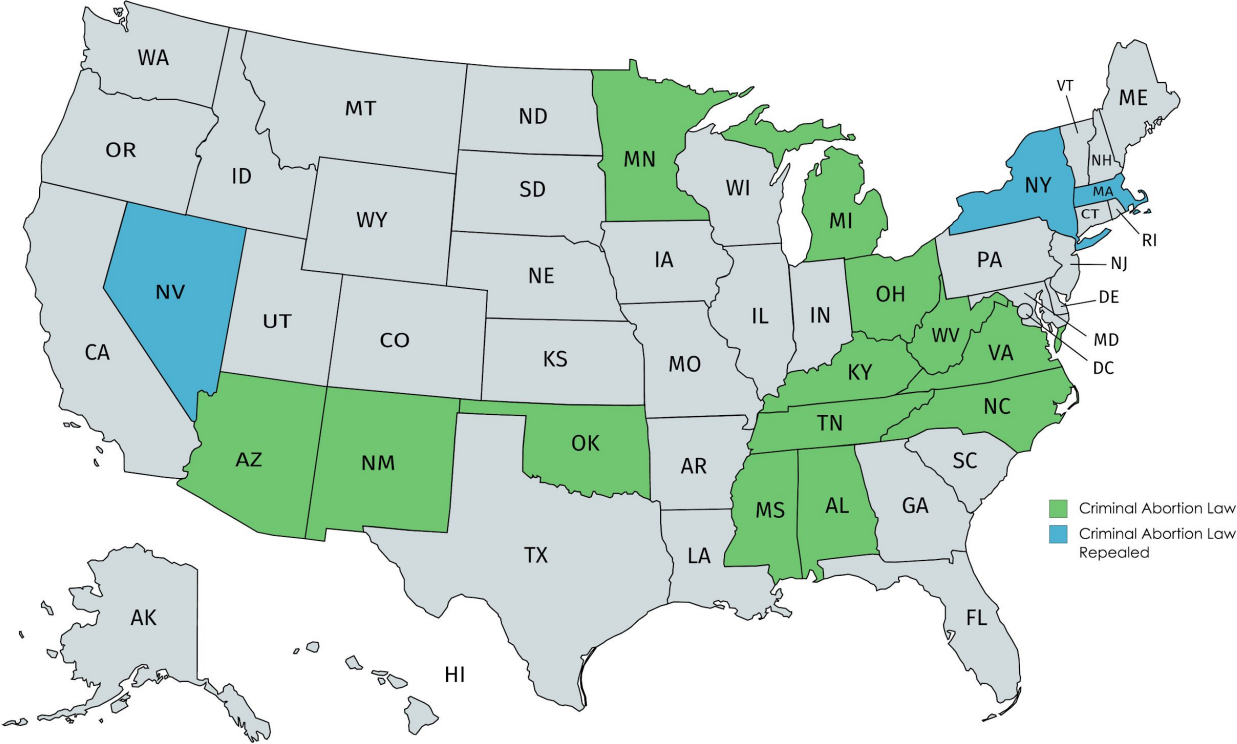
Legal & Policy Landscape of Relevant Laws

Laws Used to Address Pregnancy Outcomes

Laws Criminalizing Self-Managed Abortion, Oct 2019

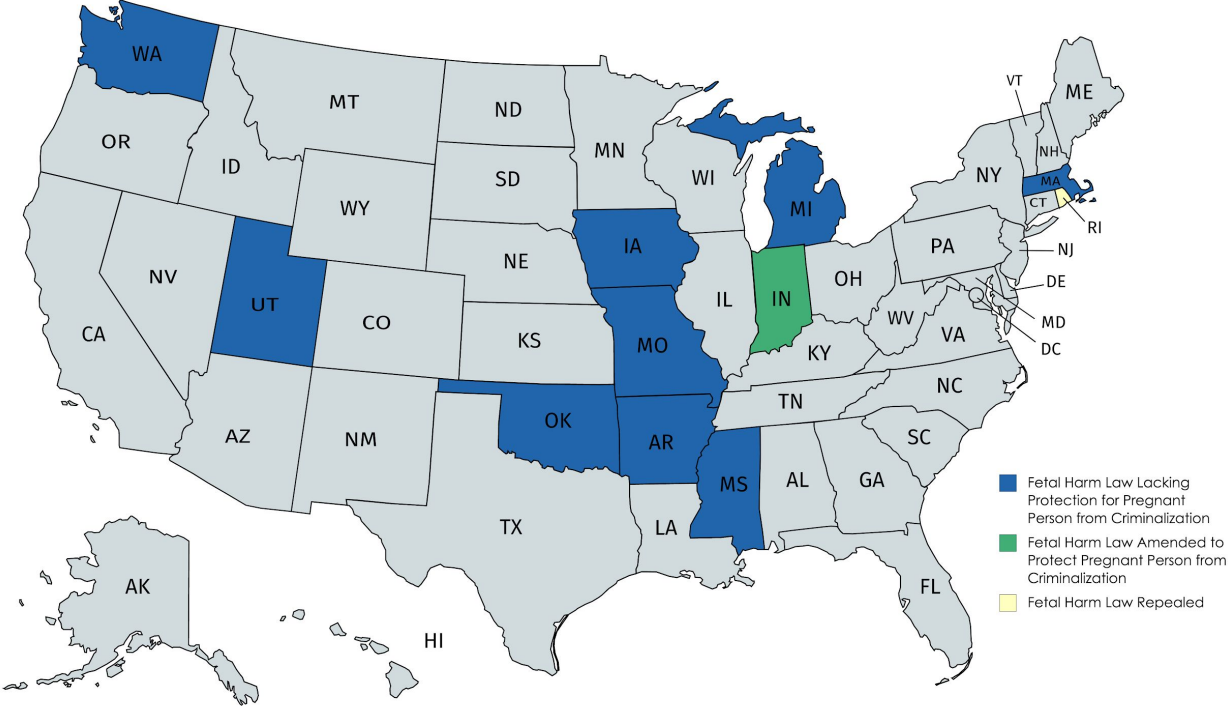


Laws Criminalizing Abortion Provision, Oct 2019



■ Criminal Abortion Law
■ Criminal Abortion Law Repealed

Fetal Harm Laws Without Protections for Pregnant People



Laws Governing Prescription Medications

- These are laws that govern access to prescription medications
- Though mifepristone and misoprostol use have been found to be safe, access is limited in many states
- Access is further limited at federal level due to REMS in effect

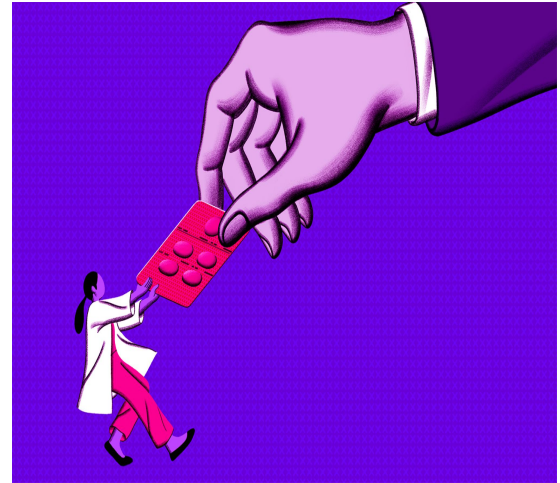


Image source: vice.com

R.E.M.S

Risk Evaluation Mitigation Strategy

What REMS Claims To Do

- “Mitigate the risk of serious complications”
- “Informing patients about the risk of serious complications associated with mifepristone”
- Create safety by limiting where and who can dispense/prescribe the drug.

What REMS Does

- Limits access by making the drug harder to find
- Create barriers by requiring prescribers to agree to provide surgical intervention, and sign an agreement with manufacturers
- Attach stigma to the medication by requiring the an agreement be placed into the patient’s medical file
- Require pregnant people to engage with systems that may make them unsafe

THEN...



WESTLAW NEWS

JULY 13, 2020 / 6:02 PM / UPDATED 7 MONTHS AGO

Judge blocks FDA restrictions on abortion pill during pandemic

By Nate Raymond



A federal judge on Monday ordered the U.S. Food and Drug Administration to temporarily suspend during the COVID-19 pandemic the enforcement of a rule that requires women to visit a hospital or clinic to obtain a drug used for abortions.

NOW...

POLITICO



HEALTH CARE

Supreme Court reinstates restrictions on abortion pill

The court's conservatives backed Trump's request to enforce rules a lower court had lifted for the pandemic.



The ruling was the court's first major action on abortion since Justice Amy Coney Barrett was confirmed to the seat left vacant by the death of liberal Justice Ruth Bader Ginsburg. | Zach Gibson/Getty Images

By ALICE MIRANDA OLLSTEIN
01/12/2021 07:00 PM EST

Adding Context With Cases

Patel v. State, 60 N.E.3d 1041(Ind.Ct. App. 2016)

Charge: Feticide, Neglect of a Dependent

Location: Indiana

Outcome: Convicted & Sentenced to serve 20 years. Released after 3 years after conviction for top charge overturned

McCormack v. Heideman 694 F.3d 1004 (9th Cir. 2012)

Charge: Submitting to an Unlawful Abortion

Location: Idaho

Outcome: Court orally granted motion to dismiss charges

Civil lawsuit: Federal court permanently enjoined such prosecutions

Jefferson County v. Marshae Jones

Charge: Manslaughter

Location: Alabama

Outcome: Indictment dismissed by the prosecution “in the interest of justice”

Zooming In On Mississippi

Mississippi Fetal Victim Laws w/o Pregnant Person Exceptions

MS Code § 97-3-19

MS Code § 97-3-37

Mississippi “Physician Only” Laws

MS Code § 97-3-3

Mississippi Drug Laws Relevant To Abortion

MS Code § 41-41-107

Adding Context With Cases

Mississippi v. Nina Buckhalter

- Ms. Buckhalter delivered a stillbirth late in pregnancy
- Charged with manslaughter due to allegations of drug use while pregnant led to stillbirth
- Case dismissed → dismissal affirmed on appeal

Mississippi v. Rennie Gibbs

- Ms. Gibbs reported to the hospital with a stillbirth
- Charged with a “depraved heart murder” due to alleged cocaine toxicity
- COD from later autopsy was due to cord wrapped around the neck

Mississippi v. Lattice Fisher

- Ms. Fisher had an at home birth
- Prosecutors relied on fetal lung float test to establish corpus delicti
- Used searches abortion pills to establish motive
- True Bill→ D/P after fetal lung float test questioned

An Eye Toward Policy

- SB2011
- HB755



Forensically Speaking...

Pregnancy Loss Outcomes Defined

NEONATAL DEATH

- Neonatal mortality: death in the 1st 28 days of life.
- Early neonatal mortality: death before 7 days
- Late neonatal mortality: death on days 7-28.

STILLBIRTH

- Death or loss of a fetus before or during a deliver. After 20th week of pregnancy
- 1 in 160 births end in stillbirth

MISCARRIAGE

- When an embryo or fetus dies before 20th week of pregnancy
- 10-20% of pregnancies end in miscarriage

What's a Fetal Lung Float Test Anyway?

- A fetal lung float test or “hydrostatic test” is an autopsy procedure that is used to determine if lungs have experienced respiration.
- It has been used to determine whether there was a live birth when fetal remains are discovered
- The method has been discredited by a plethora of experts over the decades

Live Birth- Mississippi

““Live Birth” means the complete expulsion or extraction from its mother of a product of human conception, **irrespective of the duration of pregnancy**, which, after such expulsion or extraction, **breathes or shows other evidence of life**, such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.”

WRITTEN MATERIALS AVAILABLE AT:

<https://drp.mk/yK9G1S5Rh>

Get Involved Now!

- **Sign onto our attorney letter opposing the criminalization of people who self-manage abortion:** <https://bit.ly/2m2pamj>
- **Join our Reproductive Justice Lawyers Network:** <https://www.ifwhenhow.org/join-rj-lawyers-network/>
- **Sign onto our attorney letter opposing the criminalization of people who self-manage abortion:** <https://bit.ly/2m2pamj>

Share Our Helpline: reprolegalhelpline.org



Know Your Rights

Read about your rights if you are questioned by police or when you are seeking medical care.

Your rights when seeking [medical care](#) or being [questioned by police](#) →